

the state court—that it applies only to farmers and dairy-men who occasionally, and not as a regular business, transport farm or dairy products for compensation. We cannot say that a classification based on such a use of the highways is an arbitrary one and thus encounters constitutional objection.

The exemption in favor of those hauling lumber and logs “from the forests to the shipping points” relates to a limited class of transportation simply to places of shipment and does not appear to be unreasonable. See *Sproles v. Binford*, *supra*, p. 394.

The judgment of the state court is

Affirmed.

GLENN ET AL. v. FIELD PACKING CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 541. Argued November 15, 1933.—Decided December 4, 1933.

Legislation of Kentucky laying a tax of ten cents per pound on all oleomargarine sold in the State was assailed as invalid under the due process clause of the Fourteenth Amendment and also under the Kentucky Bill of Rights. A permanent injunction was granted on the latter ground without deciding the federal question. *Held*:

1. Upon the facts found, and principles laid down by the Court of Appeals of Kentucky, the statute, although in form a taxing law, is in reality a prohibition of sale and hence invalid under the state constitution. P. 178.

2. The decree should be modified to permit the state authorities to apply for relief in the future should it appear that the statute has been sustained by the state court as valid under the state constitution, or that by reason of a change in circumstances it may be regarded as imposing a valid tax. P. 179.

5 F. Supp. 4, modified and affirmed.

APPEAL from a decree of perpetual injunction entered by the District Court of three judges in a suit to restrain taxing officials from enforcing a tax.

Per Curiam.

290 U.S.

Mr. S. H. Brown, Assistant Attorney General of Kentucky, with whom *Mr. Bailey P. Wootton*, Attorney General, and *Mr. Francis M. Burke*, Assistant Attorney General, were on the brief, for appellants.

Mr. William Marshall Bullitt, with whom *Messrs. Leo T. Wolford* and *Wm. B. Lockhart* were on the brief, for appellee.

PER CURIAM.

This suit was brought by respondent, Field Packing Company, against the State Tax Commission of Kentucky and its members to restrain the enforcement of that part of chapter 158 of the Acts of the 1932 Session of the General Assembly of Kentucky which imposed a tax of 10 cents per pound on all oleomargarine sold within the State. The statute was assailed as being in violation of the Bill of Rights of the Constitution of the State and of the due process clause of the Fourteenth Amendment of the Constitution of the United States. The District Court, composed of three judges (28 U.S.C. 380), granted an interlocutory injunction and on final hearing entered a decree making the injunction permanent.

The District Court held that the statute, although in the form of a taxing law, was in reality a prohibition of the sale of oleomargarine in Kentucky and hence was invalid under the state constitution. The question presented under the Federal Constitution was not decided. *Siler v. Louisville & N. R. Co.*, 213 U.S. 175, 191; *Hurn v. Oursler*, 289 U.S. 238, 243, 244.

Upon the facts found, the decision appears to be supported by principles laid down by the Court of Appeals of Kentucky, but, so far as the application of the state constitution is concerned, the ultimate determination of the validity of the statute necessarily rests with that court. Further, a change in circumstances may create a

situation different from that to which the opinion below was addressed.

In order to prevent the possibility that the decree may operate injuriously in the future, the decree will be modified by providing that the members of the State Tax Commission, or that Commission, may apply at any time to the court below, by bill or otherwise, as they may be advised, for a further order or decree, in case it shall appear that the statute has been sustained by the state court as valid under the state constitution, or that by reason of a change in circumstances the statute may be regarded as imposing a valid tax. See *Minnesota Rate Cases*, 230 U.S. 352, at p. 473.

Decree modified as stated in the opinion and, as modified, affirmed.

BULLARD ET AL. v. CITY OF CISCO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 10. Argued October 12, 1933.—Decided December 4, 1933.

1. The right of a transferee of corporate bonds and coupons, payable to bearer, to sue in a federal court, notwithstanding a disability of his transferrers in that regard, turns on the nature of the transfer—whether it be real or only a colorable device to enable the transferrers, through the favor and name of the transferee, to invoke a federal jurisdiction which they could not invoke in their own right. P. 187.
2. Numerous owners of defaulted municipal bonds and coupons, drawn payable to bearer, transferred them under a "bondholders' protective agreement" to four persons, styled a "bondholders' committee," for the purpose of conserving, salvaging and adjusting the investment. To this end the transferees were invested with full title to the securities and with broad discretionary powers to act by refinancing, composition, exchange of securities and other means, including litigation. *Held*: